IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

W.P. NO. 1593 /2004

PETITIONERS DEFENDANTS : 1] Ajij Khan Aged about 39 years S/o. Late Ibrahim Khan

2] Gaffar Khan Aged about 37 years S/o. Late Ibrahim Khan

Both R/o. Near Akbar Photo Studio, In front of Guru Ghasidas Satnami Mandir, Telibandha, Ravigram, Raipur Tahsil & Distt. Raipur (C.G.)

P. R. No. 1566/04
Presented by Shri M. V. Paranjape
dated 14-6-04

VERSUS

RESPONDENT PLAINTIFF : Mohd. Yusuf Raja, Aged about 42 years, **S/o. Mohd. Ishaq, R/o. Katora Talab,** Raipur, Tahsil & Distt. Raipur (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

XI-HC-22

(49)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 1599/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	29-6-2004 Shri Manoj Paranjpe, counsel for the petitioners. The petitioners have preferred this writ petition under Articles 226/227 of the Constitution of India being aggrieved by the order dated 16-4-2004 passed by the 4th Additional District Judge, Raipur in Civil Suit No.111-A/02 in the matter of Mohd. Yusuf Raja Vs. Ajij Khan & others, whereby the learned Additional District Judge rejected the application of the petitioners filed under Order 6 Rule 17 of the C.P.C. on the ground that the amendment which has been sought for in the written statement is contradictory to the earlier suit and the amendment sought for is not necessary for the determination of the real dispute between the parties. I have heard the learned counsel for the petitioners. Learned counsel for the petitioners argued that the respondent herein filed a suit against the petitioners for declaration that he is the tenant of the petitioners herein and injunction and the suit, in which the amendment was sought, was filed by the respondent herein later on claiming himself as a landlord and tenants to the petitioners herein. He further argued that since the specific plea of bar under Order 2 Rule 2 of the C.P.C. was not raised by the petitioners herein, therefore, by way of amendment the petitioners sought that amendment, which was necessary for the real	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 1693/07 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

determination of the dispute between the parties. Before seeking relief under Article 227 of the Constitution of India, the petitioners are required to show that the court below has passed an order without jurisdiction or even that jurisdiction was there but the court below has failed to exercise the jurisdiction which was vested in it and if the order passed is allowed to exist then the same will lead to failure of justice.

I have perused the impugned order and the relevant documents. It is true that the respondent herein earlier filed a suit against the petitioners herein for declaration and injunction regarding the same property and thereafter the respondent herein again filed a suit for eviction showing the petitioners herein as his tenants and this suit was filed by the respondent herein on the grounds for eviction as envisaged under Sections 12 (1)(a) and 12(1)(c) of the Chhattisgarh Rent Control Act.

The plea, which the petitioners herein wanted to raise by way of amendment, in the substance it was already raised. If we look into para-2 of the written statement in which the petitioners herein specifically raised that the plaintiff had already filed a suit for declaration to the effect that the defendants are his tenants and also for the permanent injunction. It has further been mentioned in the para-2 of the written statement that without obtaining the

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

decree of declaration, he has again filed this suit for eviction, which is the contempt of Court. Therefore, in the first instance, the petitioners have already raised these points. Moreover, as has been mentioned by the trial Court in the impugned order that this suit has been filed by the respondent specifically under the Chhattisgarh Rent Control Act and on the grounds mentioned in Sections 12(1)(a) and 12(1)(c) of the Act and reached to the conclusion that the amendment is not necessary in order to decide the real controversy between the parties. In this case, the trial Court is simply required to look into the fact that as to whether the respondent herein has been able to prove the relationship of the landlord and the tenants and if he fails to prove that relationship, then the suit will be automatically dismissed.

In the circumstances, I do not find any illegality or infirmity in the impugned order. Therefore, the writ petition is liable to be dismissed and it is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Barve

[पीछे देखिये